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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE:

B-219862

DATE: August 15, 1985

MATTER OF:

Dustin R. Lohof

DIGEST:

A bank or credit union check submitted with a bid as a bid guarantee is not an acceptable substitute for a cashier's check, since such checks may be subject to a stop payment order and therefore are not in the form of the firm commitment required of a bid guarantee at the time of bid opening.

Dustin R. Lohof protests the rejection of his bid as nonresponsive for a construction project under solicitation No. R1-16-85-171, issued by the Forest Service, United States Department of Agriculture. Mr. Lohof's bid was rejected because his bid guarantee, in the form of a credit union check,^{1/} was found to be an inadequate bid guarantee. We dismiss the protest.

The solicitation contained the clause specified in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.228-1 (1984). That clause requires bidders to submit bid guarantees in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or certain bonds or notes of the United States. The underlying principle in all of the examples of acceptable forms of a bid guarantee under the FAR clause is that the obligation must be beyond anyone's control to revoke.

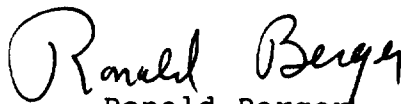
In this case, the bid was rejected as nonresponsive because of the contracting officer's uncertainty over the degree of control the bidder retained over the credit union check, that is, whether or not the bidder could stop payment on the check before it was negotiated by the government and accepted by the bank upon which it was drawn.

^{1/} For the purpose of this decision we will assume that the credit union check falls within the same category of instruments as a bank check or teller's check.

There is a distinction between a cashier's check and a bank check. A cashier's check is an instrument issued by a bank on which the bank is both the drawer and the drawee. For that reason, it is generally agreed that a cashier's check is accepted when issued, that is, it is not subject to dishonor. On the other hand, a bank check is not considered by many authorities to have been accepted when issued, and thus is subject to a stop payment order. While some jurisdictions have held otherwise, there is certainly no unanimity of opinion on the subject. See generally Annot., 97 A.L.R. 3d 714 (1980).

The credit union check was made payable to the "USDA Forest Service" and was drawn on the First National Bank of Great Falls, Great Falls, Montana. Mr. Lohof is not a member of the credit union and consequently he obtained the check through a member. According to the credit union, Mr. Lohof would have no stop payment rights because he is not a member. The clear implication is, however, that the member who obtained the check could stop payment. In any event, a contracting officer is not called upon to determine the legal effect of various instruments offered as a bid guarantee, or to check with the instrument's issuer to determine if the check is subject to dishonor. A bid guarantee requirement is generally a matter of responsiveness, and as such the adequacy of the guarantee must be determined at the time of bid opening. Building Systems Contractors, Inc., B-219416, July 9, 1985, 85-2 C.P.D. ¶ _____. Mr. Lohof's bid was therefore properly rejected because the adequacy of the credit union check as a bid guarantee could not be determined at the time of bid opening.

The protest is dismissed. 4 C.F.R. § 21.3(f) (1985).


Ronald Berger
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General Counsel